Steven John Moser (SM1133)
STEVEN J. MOSER, P.C.
Three School Street, Suite 207B
Glen Cove, New York 11542
(516) 671-1150
smoser@moseremploymentlaw.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Elsy Maria Guevara Ramirez, Plaintiff, - *against* - James A. Dagostino, James Dagostino, Jr., Lliny Garcia, Koin Key Investors, Inc., J. & E. Laundromat Inc., and Dag Laundry Corp., Defendants.	Case No.: 16-6363 **COMPLAINT** Jury Trial Demanded

Plaintiff, through her attorney, Steven J. Moser, P.C., brings this action against Defendants, James A. Dagostino, James Dagostino, Jr., Lliny Garcia, Koin Key Investors, Inc., J. & E. Laundromat Inc., and Dag Laundry Corp. and alleges as follows:

NATURE OF CLAIM

1. This action is brought to remedy overtime wage violations as required by the Fair Labor Standards Act of 1938 ("FLSA"), as amended, 29 U.S.C. §§ 201 et seq. (29 U.S.C. § 207), the New York Labor Law ("NYLL") Article 19 §§ 650 et seq. and the supporting New York Codes, Rules and Regulations, 12 N.Y.C.R.R. § 142-2.2.

2. This action is brought to remedy minimum wage violations as required by FLSA, 29 U.S.C. §§ 201 et seq. (29 U.S.C. § 206(a)) and NYLL § 652.

3. This action is brought to remedy additional violations of the NYLL which include:

   a. spread of hours violations (12 N.Y.C.R.R. § 142-2.4);

b. wage statement violations (NYLL § 195(3));

c. wage notice violations (NYLL § 195(1)(a));

4. This action is also brought to remedy unlawful discrimination in violation of New York Human Rights Law, NY Exec L § 296(1)(a)("NYHRL").

JURISDICTION AND VENUE

5. This court has subject matter jurisdiction pursuant to 29 U.S.C. § 216(b), 28 U.S.C. §§ 1331 and 1337, and supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367, since such claims are so related in this action to the federal claims that they form part of the same case or controversy under Article III of the United States Constitution.

6. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391, as a substantial part of the events or omissions giving rise to the claims in this action occurred within the Eastern District of New York.

PARTIES

Plaintiff

7. Plaintiff Elsy Maria Guevara Ramirez is a natural person who resides in Westbury, New York and was an employee of the Defendants during the relevant time period.

Defendants

Koin Key Investors, Inc.

8. Upon information and belief, Koin Key Investors, Inc. is a coin operated Laundromat located at 184 Post Avenue, Westbury, New York 11590.

9. Upon information and belief, Koin Key Investors, Inc. maintains an address of record at 179 Post Avenue, Westbury, New York 11590.

10. Upon information and belief, Koin Key Investors, Inc. is a New York domestic

business corporation operating under the laws of the State of New York.

11. Upon information and belief, Koin Key Investors, Inc. has been an employer within the meaning of the NYLL § 190(3) and employed the Plaintiff during the relevant time period. "'Employer' includes any person, corporation, limited liability company, or association employing any individual in any occupation, industry, trade, business or service." NYLL § 190(3).

12. Upon information and belief, Koin Key Investors, Inc. exercised sufficient operational control over the results produced by the Plaintiff and the means used by the Plaintiff to achieve the results, to be deemed Plaintiff's employer pursuant to NYLL. "The critical inquiry in determining whether an employment relationship exists pertains to the degree of control exercised by the purported employer over the results produced or the means used to achieve the results." *Hernandez v. Chefs Diet Delivery, L.L.C.*, 81 A.D.3d 596, 597 (2d Dep't 2011) (quoting *Bynog v. Cipriani Group, Inc.*, 1 N.Y.3d 193, 198 (2003)).

13. Upon information and belief, Koin Key Investors, Inc. has been an employer within the meaning of 29 U.S.C. § 203(d) and employed the Plaintiff during the relevant time period. An "employer" is defined as "any person acting directly or indirectly in the interest of an employer in relation to an employee . . . ." 29 U.S.C. § 203(d).

14. Upon information and belief, an employment relationship existed within the meaning of the FLSA, between Koin Key Investors, Inc. and the Plaintiff, in that Koin Key Investors, Inc. had the power to control the Plaintiff. "An employment relationship exists under the FLSA when the 'economic reality' is such that the 'alleged employer possessed the power to control the workers in question."' *Apolinar v. Glob. Deli & Grocery, Inc., No*. 12-CV-3446 (RJD) (VMS), 2013 U.S. Dist. LEXIS 138137, at *7 (E.D.N.Y. Aug. 23, 2013).

15. Upon information and belief, Koin Key Investors, Inc. had the power to hire and

fire Plaintiff, supervised and controlled her work schedules, the conditions of her employment, determined the rate and method of her pay, and maintained records of her employment. "In applying the economic reality test, the material facts are whether the alleged employer could hire and fire the worker, control work schedules and conditions of employment, determine the rate and method of payment, and maintain employment records." *Carter v. Dutchess Cmty. Coll.*, 735 F.2d 8, 12 (2d Cir. 1984).

J. & E. Laundromat Inc.

16. Upon information and belief, J. & E. Laundromat Inc. is a coin operated Laundromat.

17. Upon information and belief, J. & E. Laundromat Inc. maintains an address of record at 179 Post Avenue, Westbury, New York 11590.

18. Upon information and belief, J. & E. Laundromat Inc. is a New York domestic business corporation operating under the laws of the State of New York.

19. Upon information and belief, J. & E. Laundromat Inc. has been an employer within the meaning of the NYLL § 190(3) and employed the Plaintiff during the relevant time period.

20. Upon information and belief, J. & E. Laundromat Inc. exercised sufficient operational control over the results produced by the Plaintiff and the means used by the Plaintiff to achieve the results, to be deemed Plaintiff's employer pursuant to NYLL. *See Hernandez*, 81 A.D.3d at 597.

21. Upon information and belief, J. & E. Laundromat Inc. has been an employer within the meaning of the FLSA, 29 U.S.C. § 203(d) and employed the Plaintiff during the relevant time period.

22. Upon information and belief, an employment relationship existed within the

meaning of the FLSA, between J. & E. Laundromat Inc. and the Plaintiff, in that J. & E. Laundromat Inc. had the power to control the Plaintiff. *See Apolinar*, 2013 U.S. Dist. at *7.

23. In applying the economic reality test, upon information and belief, J. & E. Laundromat Inc. had the power to hire and fire Plaintiff, supervised and controlled her work schedules, the conditions of her employment, determined the rate and method of her pay, and maintained records of her employment. *See Carter*, 735 F.2d at 12.

Dag Laundry Corp.

24. Upon information and belief, Dag Laundry Corp. is a coin operated Laundromat.

25. Upon information and belief, Dag Laundry Corp. maintains an address of record at 484 Westbury Avenue, Carle Place, New York 11514.

26. Upon information and belief, Dag Laundry Corp. is a New York domestic business corporation operating under the laws of the State of New York.

27. Upon information and belief, Dag Laundry Corp. has been an employer within the meaning of the NYLL § 190(3) and employed the Plaintiff during the relevant time period.

28. Upon information and belief, Dag Laundry Corp. exercised sufficient operational control over the results produced by the Plaintiff and the means used by the Plaintiff to achieve the results, to be deemed Plaintiff's employer pursuant to NYLL. See Hernandez, 81 A.D.3d at 597.

29. Upon information and belief, Dag Laundry Corp. has been an employer within the meaning of 29 U.S.C. § 203(d) and employed the Plaintiff during the relevant time period.

30. Upon information and belief, an employment relationship existed within the meaning of the FLSA, between Dag Laundry Corp. and the Plaintiff, in that Dag Laundry Corp. had the power to control the Plaintiff. See Apolinar, 2013 U.S. Dist. at *7.

31. In applying the economic reality test, upon information and belief, Dag Laundry

Corp. had the power to hire and fire Plaintiff, supervised and controlled her work schedules, the conditions of her employment, determined the rate and method of her pay, and maintained records of her employment. See Carter, 735 F.2d at 12.

Koin Key Investors, Inc., J. & E. Laundromat Inc., Dag Laundry Corp.

Enterprise

32. Upon information and belief, Koin Key Investors, Inc., J. & E. Laundromat Inc., and Dag Laundry Corp. (the "Enterprise"), engaged in related activities in that they operated Laundromats, and acted as a unified operation, under common ownership and control by James A. Dagostino, James Dagostino, Jr., and Lliny Garcia for a common business purpose. An "enterprise" as defined in 29 U.S.C. § 203(r)(1) means "the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units . . . ."

33. Upon information and belief, the Enterprise "engaged in commerce" as defined in 29 U.S.C. § 203(s)(1)(A)(i), in that they operated Laundromats where employees handled or worked on goods or materials that have been moved in or produced for commerce. An "enterprise engaged in commerce or in the production of goods for commerce" is defined as having "employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person . . . ." 29 U.S.C. § 203(s)(1)(A)(i).

34. Upon information and belief, the Enterprise was an employer within the meaning of 29 U.S.C. § 203(d) and employed the Plaintiff during the relevant time period.

35. Upon information and belief, the Plaintiff was an employee of the Enterprise within

the meaning of 29 U.S.C. § 204(e)(1). An "employee" is defined as "any individual employed by an employer." 29 U.S.C. § 204(e)(1).

36. Upon information and belief, an employment relationship existed within the meaning of the FLSA, between the Enterprise and the Plaintiff, in that the Enterprise had the power to control the Plaintiff. *See Apolinar,* 2013 U.S. Dist. at *7.

37. In applying the economic reality test, upon information and belief, the Enterprise had the power to hire and fire Plaintiff, supervised and controlled her work schedules, the conditions of her employment, determined the rate and method of her pay, and maintained records of her employment. *See Carter,* 735 F.2d at 12.

38. Upon information and belief, the Enterprise exercised sufficient operational control over the results produced by the Plaintiff and the means used by the Plaintiff to achieve the results, to be deemed Plaintiff's employer pursuant to NYLL. *See Hernandez*, 81 A.D.3d at 597.

39. Upon information and belief, the Enterprise was an employer within the meaning of the NYLL § 190(3) and employed the Plaintiff during the relevant time period.

Lliny Garcia

40. Lliny Garcia is a natural person, who upon information and belief is the owner and operator of Koin Key Investors, Inc., J. & E. Laundromat Inc., and Dag Laundry Corp.

41. Upon information and belief, Lliny Garcia was an employer within the meaning of 29 U.S.C. § 203(d) and employed the Plaintiff during the relevant time period.

42. Upon information and belief, an employment relationship existed between Lliny Garcia and Plaintiff within the meaning of the FLSA, in that Lliny Garcia possessed the power to control the Plaintiff. See Apolinar, 2013 U.S. Dist. at *7.

43. In applying the economic reality test, upon information and belief, Lliny Garcia

had the power to hire and fire Plaintiff, supervised and controlled her work schedules, the conditions of her employment, determined the rate and method of her pay, and maintained records of her employment. *See Carter*, 735 F.2d at 12.

44. Upon information and belief, Lliny Garcia exercised sufficient operational control over the results produced by the Plaintiff and the means used by the Plaintiff to achieve the results, to be deemed Plaintiff's employer within the meaning of the NYLL. *See Hernandez*, 81 A.D.3d at 597.

45. Upon information and belief, Lliny Garcia was an employer within the meaning of NYLL § 190(3) and employed the Plaintiff during the relevant time period.

James A. Dagostino

46. James A. Dagostino is a natural person, who upon information and belief, is the owner and operator of Koin Key Investors, Inc., J. & E. Laundromat Inc., and Dag Laundry Corp.

47. Upon information and belief, James A. Dagostino was an employer within the meaning of 29 U.S.C. § 203(d) and employed the Plaintiff during the relevant time period.

48. Upon information and belief, an employment relationship existed between James A. Dagostino and Plaintiff within the meaning of the FLSA, in that James A. Dagostino possessed the power to control the Plaintiff. *See Apolinar*, 2013 U.S. Dist. at *7.

49. In applying the economic reality test, upon information and belief, James A. Dagostino had the power to hire and fire Plaintiff, supervised and controlled her work schedules, the conditions of her employment, determined the rate and method of her pay, and maintained records of her employment. *See Carter*, 735 F.2d at 12.

50. Upon information and belief, James A. Dagostino exercised sufficient operational control over the results produced by the Plaintiff and the means used by the Plaintiff to achieve the

results to be deemed Plaintiff's employer within the meaning of the NYLL. *See Hernandez*, 81 A.D.3d at 597.

51. Upon information and belief, James A. Dagostino was an employer within the meaning of NYLL § 190(3) and employed the Plaintiff during the relevant time period.

James Dagostino, Jr.

52. James Dagostino, Jr. is a natural person, who upon information and belief is the Chief Executive of Dag Laundry Corp.

53. Upon information and belief, James Dagostino, Jr. was an employer within the meaning of 29 U.S.C. § 203(d) and employed the Plaintiff during the relevant time period.

54. Upon information and belief, an employment relationship existed between James Dagostino, Jr. and Plaintiff within the meaning of the FLSA, in that James Dagostino, Jr. possessed the power to control the Plaintiff. *See Apolinar*, 2013 U.S. List. at *7.

55. In applying the economic reality test, upon information and belief, James Dagostino, Jr. had the power to hire and fire Plaintiff, supervised and controlled her work schedules, the conditions of her employment, determined the rate and method of her pay, and maintained records of her employment. *See Carter*, 735 F.2d at 12.

56. Upon information and belief, James Dagostino, Jr. exercised sufficient operational control over the results produced by the Plaintiff and the means used by the Plaintiff to achieve the results to be deemed Plaintiff's employer within the meaning of the NYLL. *See Hernandez*, 81 A.D.3d at 597.

FACTUAL ALLEGATIONS

57. Plaintiff worked at the Defendants' Laundromat located at 184 Post Avenue, Westbury, New York 11590.

58. Plaintiff was employed as an attendant from approximately May 2014 to May 2015.

59. Plaintiff was an employee of the Defendants within the meaning of 29 U.S.C. § 203(e) and NYLL § 190(3) during the relevant period of employment – May 2014 to May 2015.

60. Upon information and belief, the Defendants were the employer of the Plaintiff during the relevant period of employment within the meaning of 29 U.S.C. § 203(d) and NYLL § 190(3).

61. Plaintiff worked a varying schedule.

62. Plaintiff worked Monday to Saturday from May 2014 to October 2014.

a. Monday through Friday - Plaintiff was scheduled to work from 7:00 am to 5:00 pm.

b. Saturdays - Plaintiff was scheduled to work from 7:00 am to 11:00 pm.

63. Plaintiff worked Monday to Friday and Sundays, in addition to approximately four Saturdays, from October 2014 to May 2015.

a. Monday through Friday - Plaintiff was scheduled to work from 7:00 am to 5:00 pm.

b. Sundays - Plaintiff was scheduled to work from 7:00 am to 11:00 pm.

64. Saturdays (four) - Plaintiff was scheduled to work from 7:00 am to 5:00 pm.

65. Plaintiff continued working 20 to 30 minutes after her scheduled shift on Monday through Fridays, because the employee relieving her shift was late.

66. Plaintiff did not have a bona-fide meal period. She was required to remain on site and be available to perform job duties.

67. Plaintiff worked between 68 and 76 hours a week.

68. Plaintiff's rate of pay was approximately $5.00 an hour.

69. Defendants deprived Plaintiff of the minimum wage as required by 29 U.S.C. §§

201 et seq. (29 U.S.C. 206(a)) and NYLL § 652.

70. Defendants deprived Plaintiff of an overtime wage as required by 29 U.S.C. §§ 201 et seq. (29 U.S.C. § 207), NYLL Article 29 §§ 650 et seq. and 12 N.Y.C.R.R. § 142-2.2.

71. Defendants deprived Plaintiff of a spread of hours premium as required by 12 N.Y.C.R.R. § 142-2.4.

72. Defendants never provided Plaintiff with a wage notice that complied with NYLL § 195(1)(a).

73. Defendants never provided Plaintiff with a wage statement that complied with NYLL § 195(3).

74. Defendants failed to maintain accurate records of the hours worked by the Plaintiff and as a result Plaintiff was not compensated for all hours worked.

75. Plaintiff informed Defendants of her pregnancy in February 2015.

76. Plaintiff was terminated on May 7, 2015 after she began to show.

The Defendants Constitute Joint Employers of the Plaintiff

77. Upon information and belief, James A. Dagostino, James Dagostino, Jr. and Lliny Garcia possessed operational control over the Enterprise and possessed an ownership interest in each of the corporate Defendants.

78. Upon information and belief, all of the Defendants are associated and joint employers, act in the interest of each other with respect to employees and share control over the employees.

79. Upon information and belief, each of the Defendants possessed substantial control over the Plaintiff's working conditions, and over the practices and policies with respect to the employment and compensation of the Plaintiff.

80. Upon information and belief, the Defendants jointly employed Plaintiff and were her employers within the meaning of 29 U.S.C. §§ 201 et. seq. and the NYLL during the relevant time period.

81. Upon information and belief, the Defendants jointly employed Plaintiff and were her employers within the meaning of the New York State Human rights law during the relevant time period.

FIRST CAUSE OF ACTION
Minimum Wage Violation
Fair Labor Standards Act
29 U.S.C. §§ 201, et. seq. (29 U.S.C. § 206(a))

82. Plaintiff realleges and incorporates by reference each allegation contained in the paragraphs above as though fully set forth herein.

83. The minimum wage provisions set forth in the FLSA, 29 U.S.C. §§ 201 et seq., (29 U.S.C. § 206(a)) and the supporting federal regulations apply to Defendants and protect Plaintiff.

84. Effective July 24, 2009, the federal minimum wage for covered nonexempt employees is $7.25 per hour.

85. Defendants paid the Plaintiff approximately $5.00 an hour.

86. Defendants failed to pay Plaintiff the minimum wages to which she is entitled for the work she performed.

87. Defendants either knew or acted with reckless disregard as to whether their conduct violated the FLSA. Defendants did not make a good faith effort to comply with the FLSA with regard to compensation to the Plaintiff. McLaughlin v. Richland Shoe Co., 486 U.S. 128 (1988). Therefore, a three year statute of limitations applies. 29 U.S.C. § 255.

88. As a result of Defendants' violations of the FLSA, Plaintiff has suffered damages by being denied minimum wages in accordance with the FLSA and is entitled to recovery of such

amounts, including liquidated damages, prejudgment interest, reasonable attorney's fees and costs, and other compensation pursuant to 29 U.S.C. §§ 201 et. seq.

SECOND CAUSE OF ACTION
Overtime Violations
Fair Labor Standards Act
29 U.S.C. §§ 201, *et. seq.*; 29 U.S.C. §§ 207(a) & 126

89. Plaintiff realleges and incorporates by reference each allegation contained in the paragraphs above as though fully set forth herein.

90. The overtime wage provisions set forth in the FLSA, 29 U.S.C. §§ 201 et seq., and the supporting federal regulations apply to Defendants and protect Plaintiff.

91. Defendants were required to pay Plaintiff at a rate of one and one half the regular rate for all hours worked in excess of (40) forty hours in a workweek.

92. Defendants failed to pay Plaintiff the proper overtime wages for working more than (40) forty hours per week.

93. Defendants paid Plaintiff approximately $5.00 an hour. She was not paid an overtime rate of one and one half times the regular rate for all hours worked in excess of (40) forty hours per week.

94. Defendants' violations of the FLSA have been willful, in that they knew or should have known that their actions, as described herein, violated the FLSA.

95. Defendants either knew or acted with reckless disregard as to whether their conduct violated the FLSA. Defendants did not make a good faith effort to comply with the FLSA with regard to overtime compensation to the Plaintiff. McLaughlin, 486 U.S. at 133-35. Therefore, a three year statute of limitations applies. 29 U.S.C. § 255.

96. As a result of Defendants' violations of the FLSA, Plaintiff has suffered damages

by being denied overtime wages in accordance with the FLSA and is entitled to recovery of such amounts, including liquidated damages, prejudgment interest, reasonable attorney's fees and costs, and other compensation pursuant to 29 U.S.C. §§ 201 et. seq.

THIRD CAUSE OF ACTION
Minimum Wage Violation
NYLL § 652

97. Plaintiff realleges and incorporates by reference each allegation contained in the paragraphs above as though fully set forth herein.

98. NY CLS Labor § 663(1) states,

> "If any employee is paid by his or her employer less than the wage to which he or she is entitled under the provisions of this article, he or she shall recover in a civil action the amount of any such underpayments, together with costs all reasonable attorney's fees, prejudgment interest as required under the civil practice law and rules, and unless the employer proves a good faith basis to believe that its underpayment of wages was in compliance with the law, an additional amount as liquidated damages equal to one hundred percent of the total of such underpayments found to be due."

99. "Any agreement between the employee and the employer to work for less than such wage shall be no defense to such action." Id.

100. Defendants paid Plaintiff approximately $5.00 an hour.

101. The Minimum wage during the relevant time was $8.00 until January 1, 2015 and then increased to $8.75.

102. Defendants willfully deprived Plaintiff of her Minimum wages.

103. As a result of Defendants' violation of the NYLL, Plaintiff is entitled to recover unpaid wages, liquidated damages, reasonable attorney's fees and costs of the action and prejudgment interest.

FOURTH CAUSE OF ACTION
Unpaid Overtime
Article 19 §§ 650 et seq.; 12 N.Y.C.R.R. § 142-2.2

104. Plaintiff realleges and incorporates by reference each allegation contained in the paragraphs above as though fully set forth herein.

105. The overtime wage provisions of Article 19 of the NYLL and its supporting regulations apply to Defendants, and protect Plaintiff.

106. Defendants have failed to pay Plaintiff overtime wages to which she is entitled pursuant to the NYLL and the supporting New York State Department of Labor Regulations.

107. Defendants paid Plaintiff approximately $5.00 an hour. She was not paid an overtime rate of one and one half times the regular rate for all hours worked in excess of (40) forty hours per week.

108. Through their knowing or intentional failure to pay Plaintiff overtime wages for hours worked in excess of (40) forty hours per week, Defendants have willfully violated the NYLL Article 19, §§ 650 et seq., and the supporting New York State Department of Labor Regulations.

109. As a result of Defendants' violations of the NYLL, Plaintiff is entitled to recover from Defendants unpaid overtime wages, liquidated damages, reasonable attorney's fees, costs and prejudgment interest.

FIFTH CAUSE OF ACTION
Spread of Hours Violations
12 N.Y.C.R.R. § 142-2.4

110. Plaintiff realleges and incorporates by reference each allegation contained in the paragraphs above as though fully set forth herein.

111. Pursuant to New York Law, "[an] employee shall receive one hour's pay at the basic minimum hourly wage rate, in addition to minimum wage required . . . for any day in which

. . . the spread of hours exceeds 10 hours." Apolinar, 2013 U.S. Distr. at *17 (citing 12 N.Y.C.R.R. § 142-2.4).

112. The spread of hours is defined by New York as "'the length of the interval between the beginning and end of an employee's workday,' which 'includes working time plus time off for meals plus intervals off duty'". *Greathouse v. JHS Sec., Inc.*, No. 11 Civ. 7845 (PAE) (GWG), 2012 U.S. Dist. LEXIS 127312, at *14 (S.D.N.Y. Sept. 7, 2012) (citing 12 N.Y.C.R.R. 142-3.4).

113. Plaintiff was entitled to a spread of hours pay.

114. Defendants through their intentional and knowing violation of NYLL consolidated in 12 N.Y.C.R.R. § 142-2.4, deprived the Plaintiff of the spread of hours premium.

115. Due to Defendants' violations of the NYLL, Plaintiff is entitled to recover from Defendants her unpaid wages, liquidated damages, reasonable attorney's fees, costs and prejudgment interest.

SIXTH CAUSE OF ACTION
Wage Statement Violations
NYLL §§ 195 and 198

116. Plaintiff realleges and incorporates by reference each allegation contained in the

117. paragraphs above as though fully set forth herein.

118. NYLL § 195(3) requires employers to furnish to each employee "a statement with every payment of wages," listing inter alia, the dates of work covered by that payment of wages, name of the employee, name of the employer, address and phone number of the employer, rate or rates of pay and basis thereof.

119. The Defendants failed to provide wage statements to the Plaintiff meeting the requirements of NYLL § 195(3).

120. Due to Defendants' violation of NYLL § 195(3), Plaintiff is entitled to recover

"damages of two hundred fifty dollars for each work day that the violations occurred…but not to exceed a total of five thousand dollars, together with costs and reasonable attorney's fees." NYLL § 198(1)(d).

SEVENTH CAUSE OF ACTION
Wage Notice Violations
NYLL §§ 195 and 198

121. Plaintiff realleges and incorporates by reference each allegation contained in the paragraphs above as though fully set forth herein.

122. NYLL § 195(1)(a) requires an employer to furnish to each employee a notice at the time of hiring or change in pay, that contains *inter alia*, the regular rate of pay, the overtime rate, the regular day on which pay is dispersed, the name of the employer and the employer's contact information.

123. The Defendants failed to furnish the wage notice to the Plaintiff as required by NYLL § 195(1)(a).

124. Due to Defendants' violation of NYLL § 195(1)(a), Plaintiff is entitled to recover statutory "damages of fifty dollars for each work day that the violations occurred . . . but not to exceed a total of five thousand dollars, together with costs and reasonable attorney's fees." NYLL § 198(1)(b).

EIGHTH CAUSE OF ACTION
Unlawful Discrimination
New York State Human Rights Law (Exec. Law § 296)

125. Plaintiff realleges and incorporates by reference each allegation contained in the paragraphs above as though fully set forth herein.

126. The Human Rights Law, as set forth in Executive Law § 296 (1) (a), makes it an unlawful discriminatory practice for an employer to discriminate against an individual in

compensation or in terms, conditions or privileges of employment, inter alia, because of the individual's sex.

127. Employment discrimination on the basis of pregnancy falls within the prohibitions of Executive Law § 296 (1) (a) as sex or gender discrimination. *Krause v. Lancer & Loader Grp., LLC*, 2013 NY Slip Op 23142, ¶ 5, 40 Misc. 3d 385, 392, 965 N.Y.S.2d 312, 318 (Sup. Ct.).

128. The plaintiff was pregnant.

129. The defendants were aware that the plaintiff was pregnant.

130. The plaintiff was fired because she was pregnant.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests that this court grant the following relief:

a. Unpaid overtime pay under the FLSA and NYLL;

b. Unpaid minimum wages;

c. Liquidated damages under the FLSA:

d. Liquidated damages on all NYLL Claims;

e. Statutory damages in the amount of $50.00 for each workday that the violation of the notice provisions of NYLL § 195(1)(a) occurred, not to exceed a total of $5,000.00. NYLL § 198(1)(b);

f. Statutory damages in the amount of $250.00 per workday for each violation of the wage statement provision of NYLL § 195(3), not to exceed a total of $5,000.00. NYLL § 198(1)(d);

g. Back pay;

h. Front pay;

i. Emotional damages, including, but not limited to stress and anxiety arising from the

Defendants' human rights violation;

j. Reasonable attorney's fees and cost of the action;

k. Prejudgment interest; and

l. Such other relief as the Court shall deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues of fact and damages stated herein.

Dated: Glen Cove, New York
November 10, 2016

STEVEN J. MOSER, P.C.

By: Steven J. Moser
3 School Street, Suite 207 B
Glen Cove, New York 11542
(516) 671-1150
F (516) 882-5420
smoser@moseremploymentlaw.com
Attorneys for Plaintiff